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Attorneys for Plaintiff World Botanical Gardens, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH**

In re: WALTER L. WAGNER, Debtor.	Bankruptcy Case No. 12-35494 Chapter 7 Honorable Joel T. Marker
WORLD BOTANICAL GARDENS, INC., Plaintiff, v. WALTER L. WAGNER. Defendant.	Adversary Proceeding No. 13-02099 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Filed via ECF)

Plaintiff World Botanical Gardens, Inc. ("WBGJ"), by and through its attorneys of record and pursuant to Local Rule 7056-1 and Fed.R.Civ.P. 56, moves for Summary Judgment finding that the debt arising under certain final orders and judgments ("Judgments") in favor of WBGJ against Defendant Walter L. Wagner ("Wagner") is nondischargeable under 11 U.S.C. § 523(a)(2), (4), (6) and (19). This Motion for Summary Judgment is supported by a concurrently filed Plaintiff's

Memorandum in Support of Motion for Summary Judgment.

WBGI seeks judicial notice of the Nevada and Hawaii state court Judgments under which WBGI believes the debt arising therefrom is nondischargeable, and which are specifically identified as follows:

1. The Nevada Orders and Judgments

- (1) Findings of Fact, Conclusions of Law, Order of Permanent Injunction, and Judgment; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Second Judicial District for the State of Nevada, Washoe County; Case No. CV05-02079, dated October 2, 2006. A copy of the Findings of Fact, Conclusions of Law, Order of Permanent Injunction, and Judgment is attached as Exhibit A (hereinafter the “Nevada Judgment” and the court as the “Nevada Court”);
- (2) Findings of Fact, Conclusions of Law, Order of Contempt, and Judgment of Contempt; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Second Judicial District for the State of Nevada, Washoe County; Case No. CV05-02079, dated February 7, 2007. A copy of the Findings of Fact, Conclusions of Law, Order of Contempt, and Judgment of Contempt is attached as Exhibit B (hereinafter the “Nevada Contempt Judgment”);
- (3) Order of Affirmance; World Botanical Gardens, Inc. v. Walter Wagner, et al.; The Supreme Court of the State of Nevada; No. 48428, dated January 15, 2008. The United States Supreme Court denied Wagner’s Petition for a Writ of Certiorari. A copy of the Order of Affirmance and the denial of Wagner’s Petition for Writ of Certiorari is attached as Exhibit C (hereinafter the “Affirmance Order”)

2. The Hawaii Orders and Judgments

- (1) Findings of Fact, Conclusions of Law, and Decision and Order; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Third Circuit for the State of Hawaii; Case No. 05-01-0210, dated October 9, 2008. A copy of the Findings of Fact, Conclusions of Law, and Decision and Order is attached as Exhibit D (hereinafter the “Hawaii Decision” and the court as the “Hawaii Court”);
- (2) First Amended Final Judgment; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Third Circuit for the State of Hawaii; Case No. 05-01-0210,

dated September 28, 2009. A copy of the First Amended Final Judgment is attached as Exhibit E (hereinafter the "Hawaii Judgment");

- (3) Summary Disposition Order; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Intermediate Court of Appeals of Hawai'i; Case No. 05-01-0210 and App. No. 30133, dated September 20, 2011. A copy of the Summary Disposition Order is attached as Exhibit F (hereinafter the "Summary Disposition Order"); and
- (4) Order Rejecting Application for Writ of Certiorari; World Botanical Gardens, Inc. v. Walter Wagner, et al.; Supreme Court of Hawai'i; Case No. 05-01-0210 and App. No. 30133, dated December 6, 2011. A copy of the Order Rejecting Application for Writ of Certiorari is attached as Exhibit G (hereinafter the "Order Rejecting Certiorari").

The Judgments are the basis for WBGi's argument that Wagner's debts arising from the Judgments are nondischargeable, and moreover, that the doctrine of issue preclusion bars relitigation of the factual and legal issues related to the determination of nondischargeability.

Plaintiff's Memorandum in Support of Motion for Summary Judgment filed concurrently includes a concise statement of undisputed material facts to which WBGi contends there exist no genuine issues of material fact as supported and referenced in the record.

WHEREFORE, WBGi respectfully requests that the Court grant WBGi's Motion for Summary Judgment and find that the debt arising out of the Judgments is excepted from discharge pursuant to 11 USC § 523(a)(2), (4), (6) and (19).

DATED this 24 day of September, 2013.

RICHER & OVERHOLT, P.C.



Arnold Richer
Attorneys for Plaintiff World Botanical Gardens, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be delivered to the following in the manner and on the date below indicated:

<input checked="" type="checkbox"/> Mail	Walter L. Wagner
<input type="checkbox"/> Fax	532 N 700 E
<input type="checkbox"/> Email	Payson, Utah 84651
<input type="checkbox"/> Hand Delivery	(Pro Se Appearance)

DATED this 24 day of September, 2013.

A handwritten signature in black ink, appearing to read "Arnold Fisher", is written over a horizontal line.